

Foothills Care Center, Inc. and United Nurses, Professionals and Health Care Employees, Local Seven, UFCW, AFL-CIO. Cases 27-CA-6866, 27-CA-6866-3, 27-CA-6955, 27-CA-6974, and 27-CA-6974-3

April 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

On November 3, 1981, Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a reply brief to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Foothills Care Center, Inc., Longmont, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This case was heard in Denver, Colorado, on August 27, 1981.¹ The charges in Cases 27-CA-6866 and 27-CA-6866-3 were filed on August 21 by United Nurses, Professional and Health Care Employees, Local Seven, UFCW, AFL-CIO (Union). The charge in Case 27-CA-6955 was filed by the Union on October 10. The charges in Cases 27-CA-6974 and 27-CA-6974-3 were filed by the Union on October 21. By Order dated November 28, the Regional Director for Region 27 of the National Labor Relations Board consolidated the aforesaid cases for hearing, and on said date the Regional Director issued a consolidated complaint² alleging that Foothills

¹ All dates hereinafter are within 1980, unless stated to be otherwise.
² The consolidated complaint (herein called the complaint) was amended at the hearing to allege that David Zapiler is consultant and part owner of Respondent rather than administrator.

Care Center, Inc. (Respondent) violated Section 8(a)(1),³ (3), and (4) of the National Labor Relations Act (Act).

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs, which have been carefully considered, filed on behalf of the General Counsel and Respondent.

Upon the entire record, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is, and at all times material herein has been, a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, and maintains a health care facility in Longmont, Colorado, where it provides health care to aged and chronically ill persons. In the course and conduct of its business operations, Respondent annually purchases and receives goods and materials valued in excess of \$50,000, directly from points and places outside the State of Colorado, and annually receives gross revenue in excess of \$100,000.

I find that Respondent is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Nurses, Professionals and Health Care Employees, Local Seven, UFCW, AFL-CIO is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background⁴

Respondent is licensed by the State of Colorado as a skilled nursing facility with 180 beds, 120 of which are classified by the State as skilled, and 60 of which are classified as intermediate. Respondent participates in a governmental Medicaid program, and operates pursuant to Colorado State regulations. Those regulations cover, among other subjects, minimum staffing patterns. At times relevant herein, Respondent followed the state regulations and maintained the required staff. The facility is located in one single-story building, and has a skilled wing and an intermediate wing.⁵ State regulations require⁶ that Respondent have a skilled wing nursing staff

³ Par. V(a), (b), and (d) of the complaint, alleging violations of Sec. 8(a)(1) of the Act, were withdrawn at the hearing.

⁴ This background summary is based upon credited testimony and evidence not in dispute, and upon stipulations of counsel.

⁵ References to "skill" refer to the degree of nursing qualifications required of the nurses who attend patients on the respective wings.

⁶ These regulations were not introduced into evidence. References to the regulations are based upon credited testimony and are not in dispute. The General Counsel did not challenge or contradict the testimony of Respondent's witnesses relative to staffing requirements demanded by state regulations.

adequate to provide 2 hours of care 24 hours each day and that the nursing staff be supervised by a registered nurse (RN) or a licensed practical nurse (LPN). An RN must be in the building, and a licensed person (RN or LPN) must be at the skilled wing nurses' station, 24 hours each day. The nursing staff provides personal care of, and attendance to, patients of the facility. The staff, assisted by aides, assures cleanliness, proper nutritional care, and proper medication of patients. All medication given to patients is administered under the supervision of licensed physicians.

At times relevant herein, Respondent had approximately 140 employees and a patient occupancy rate of approximately 97 percent. Zapiler supervised the entire staff; Roger Fell was the facility administrator; and Ruth Clancy was the director of nursing.⁷ At times relevant herein, Respondent employed approximately 20 to 30 nurses, approximately half of which were RNs and half of which were LPNs. RNs and LPNs work on three shifts, 6:45 a.m. to 3:15 p.m.; 2:45 p.m. to 11:15 p.m.; 10:45 p.m. to 7:15 a.m. The 15-minute overlap at each end of the shifts is to afford time for reporting and consultation. Zapiler, Fell and Clancy work during the day, until approximately 5 p.m.; usually they are not in the building after 5 p.m. Usually, there are six nurses on the 6:45 a.m. to 3:15 p.m. shift, and three nurses on the 2:45 p.m. to 11:15 p.m. shift.⁸ The facility has three stations used by the nurses, and there is a desk and telephone at each station. An RN or LPN must be available at all times, operating from each station.

Union activity at Respondent's facility commenced approximately in May 1980, and a representation election was held August 8, 1980. One of the original organizers was Maureen Opal, who commenced working for Respondent as a staff nurse (RN) on October 22, 1979. Opal was an active union advocate, participated in nearly all the union activity at the facility, was a union observer at the election, and was known to Zapiler, Fell, and Clancy as an active union supporter. Opal's immediate supervisor was Carol Eckhart, who in turn was supervised by Clancy. Opal was responsible for "care-givers" (aides), "passed" (gave out) medication, had supervisory responsibilities relative to care-givers, and was responsible for the nursing care of patients to which she was assigned, totaling approximately 45 to 50. At times relevant herein, Opal worked on the 2:45 p.m. to 11:15 p.m. shift.

Approximately at 5 or 5:30 p.m. on the day of the election, after the election was completed and the results were known, Opal and Zapiler met in the hallway and engaged in a conversation. They talked about some of the problems of the facility, and about the election. The conversation did not contain any statements alleged in the complaint as having been in violation of the Act, but the conversation is discussed *infra*, to the extent that it may contain evidence of Respondent's union animus.

Respondent's written personnel policy, dated January 27, 1977, states, *inter alia*:

⁷ The supervisory status of Zapiler, Fell, and Clancy is not in dispute. Individuals are referred to herein by their last names.

⁸ The nurses may be either RNs or LPNs.

9. Employees leaving the building for lunch or for emergency reasons must notify their immediate supervisor, and sign the log book in addition to punching out the time card.

On October 5 Opal went to work as assigned, at 2:45 p.m. At approximately 5 or 5:30 p.m., she received a telephone call from her daughter who said Opal's husband had hurt his back digging post holes in the yard and was immobile on the ground. Opal instructed the daughter to get help from the neighbors until Opal could get home. Opal was the only nurse on duty at her station, and she attempted, without success, to obtain through telephone calls the assistance of some other nurse who could come to the facility to relieve her. She was unable to reach Clancy on the telephone, and Clancy's new assistant director, Lois Edwards, was not on the telephone list kept by the facility. Opal called Karen Brozovich, the in-service director, and asked that she cover for her, but Brozovich was unable to do so. Opal then called several nurses on the telephone, but either was unable to reach them, or to get any of them to relieve her. Opal then talked with the nurses on the other two stations, Shirley Brader and Mrs. Pastorius, and explained the situation to them. Brader and Pastorius took Opal's narcotics keys, and agreed to cover her station. Opal left the facility, and after arriving home and assessing the situation, called Pastorius on the telephone and said she would come in later, pass out the bedtime medications, do anything else that was necessary, and then return home, since she had been unable to find another nurse to complete her shift. Opal returned to her work station at approximately 7:15 p.m., passed out medicine and narcotics, and returned home after verifying that Brader and Pastorius had her home telephone number. Opal took her husband to the hospital, where he was examined and found to have acute lumbosacral strain. He was given injections, and told to go home "on complete bed rest." Opal and her husband left the hospital at approximately 10:30 or 10:45 p.m., and upon returning home she called the facility to ascertain if there were any problems. She later called again, for the same purpose.

The following morning, at approximately 9:15 or 9:30, Opal called Clancy on the telephone and related what had happened the night before. Clancy said she already had heard about it, and stated, among other things, "Well, you left your patients uncovered and your station uncared for." Opal was not scheduled to work on October 6, but she went to the facility that day between 2 and 3 p.m. Before going there, she obtained a report on her husband from the hospital to give to Clancy. Opal talked with Clancy at approximately 4 p.m., and Clancy said she was very upset with Opal; that it ". . . is a matter of priorities," i.e., that patients should be first considered. Opal reminded Clancy that, when Clancy hired her, Opal stated that ". . . my family would always be first priority to me."

Opal reported for work, as scheduled, at 2:45 p.m. on October 9 and Clancy told her to report to Fell. She talked with Fell, who commented that Opal had worked only 3-1/2 hours of her 8-hour shift on October 5, and

instructed Opal to give him a written explanation. Opal prepared the statement⁹ and gave it to Fell, with a copy of the hospital report, on October 10. She included with the statement, a supporting statement of a neighbor who helped her with her husband, and a statement by the husband's attending physician.

On October 14 a fellow nurse, Anna Moy, agreed to trade shifts with Opal in order that Opal could be free October 19 for her son's birthday, with Opal to work Moy's October 21 shift. Moy submitted a written request to Clancy, who denied the request and stated to Moy that Opal had missed 2 of the days she was scheduled to work.

Opal was not scheduled to work on October 20, but she went to the facility that day to pick up her paycheck. When Clancy gave her the check, she stated that Opal had been discharged.

B. *Emergency Absence From Respondent's Facility*

There is no dispute about the fact that Respondent's personnel policies required advance notice by employees of emergency absence, nor is there dispute about the fact that regulations governing Respondent's staff require that each nurses' station be supervised at all times by an RN or LPN.¹⁰ Opal impliedly acknowledged those facts by going to considerable lengths in attempting to notify Respondent of her absence, by arranging for her station to be covered by Brader and Pastorius, and by her expressed concern to fellow employees and to members of management about the incident. Clearly, Opal engaged in extraordinary conduct when she left her station without direct supervision, and she knew that conduct was extraordinary.¹¹ The fact that Brader and Pastorius were available in case of necessity is irrelevant, since if either or both of them had to attend to Opal's station, their own stations would be without supervision.

General Counsel introduced evidence of other nurses' absence from their stations. Clancy testified that she knows of nurses having left their shifts, but in such cases it was on the 6:45 a.m. to 3:15 p.m. shift, and Clancy or her assistant, or the in-service director, was available to cover the station.

Further, the absences were not as long as 5 hours. Clancy said that was not the case with Opal, who left her shift unattended, and Clancy said she knows of no absence as long as that of Opal. Further, Clancy stated, she knows of no instance wherein a nurse left her station without first getting permission of her supervisor. Thus, Clancy concluded, she knows of no instance wherein a nurse left her station unattended in the manner that Opal did.

Hazel Cawley, a staff nurse since 1974, testified that she knows of several occasions during the past 5 years when nurses left their stations during their shifts. She re-

cited one instance last year, when a staff nurse, Roberta Brown, left during her 6:45 a.m. to 3:15 p.m. shift to go home in order to shampoo her rugs. She said Brown later returned to finish her shift. Cawley testified that she became ill while on the 6:45 to 3:15 shift approximately 2 months ago, and had to leave work. However, she first spoke with Clancy and got her approval.

Betty Bond, an RN with Respondent since May 1978, testified that, on one occasion in 1979, she left her shift for approximately 15 minutes because her son was ill, but that she first talked with Clancy and got her approval. Bond corroborated the Brown incident related by Cawley, and said Brown was absent approximately 1-1/2 hours, without being disciplined. Bond related an incident that occurred in 1980 on the 6:45 a.m. to 3:15 p.m. shift, wherein nurse Rosemary Roush left for an hour to go to lunch, after giving Bond her keys. Bond said Roush was not disciplined, but that she assumed Housh had permission to leave, since she assumed Roush had permission to leave, since she assumed nurses on duty had to have Clancy's approval to leave.

Anita Froid, an LPN with Respondent since 1978, testified that, on one occasion, she left her station on the 6:45 a.m. to 3:15 p.m. shift for 15 or 20 minutes when her son was injured, and that she did the same thing on a second occasion a short time after the first instance. In both instances, she said, she first asked for and received, Clancy's permission. Froid corroborated the Brown incident, and said Brown left "over the dinner hour," between medication periods.

Neldeene Jelinek, an RN for Respondent from September 1976 to May 1981, testified that, within the past 2 years, she once left her shift at 8:30 a.m., and remained out the rest of the day to care for her child who was ill. She said she first asked for, and received, the permission of Millie Griggin, assistant director of nurses, for the entire absence. Jelinek further testified that, in October 1980, she was given 1 day off because of an emergency situation. In both instances, Jelinek was working the day shift. Jelinek testified that Opal called on the telephone on October 5 and asked her to work Opal's shift, but Jelinek was unable to do so.

Clancy testified on rebuttal that, relative to one instance referred to by Cawley when the latter did not receive a report when she took over a shift because there was no nurse on duty, Cawley was referring to the intermediate wing, which was not required to have a nurse on duty during the shift referred to.¹² Clancy further testified that she never was informed about the Brown incident, nor did Brown request permission for absence. Clancy reiterated her earlier testimony that permission for absence does not present a problem during the day, since she, or her assistant, or the in-service director, is available to cover the station.

⁹ G.C. Exh. 4.

¹⁰ Opal's absence from her station for a period of approximately 5 hours on October 5 is not in controversy. There was no incident during that absence that required special handling, such as patients falling or becoming ill, or physicians requiring Opal's assistance.

¹¹ Opal's testimony that she had no knowledge of Respondent's policy concerning departure from the facility in emergency situations is contrary to the actions she took and is given no credence.

¹² Zapiler also testified that, at the time referred to by Cawley, a nurse was not required on the night shift for the intermediate wing. He further stated that at least one RN and two LPNs are required on all shifts of the skilled wing.

Discussion

Whatever may be the merits of Opal's discharge, it is clear that Respondent did have a written policy concerning emergency absences from the facility;¹³ that Respondent followed that policy; that nurses were aware of, and adhered to, that policy; that Opal violated the policy; and that Opal's violation was not of the same nature as absences of other employees as contended by the General Counsel. Cawley, Bond, Froid, and Jelinek all testified that they asked in advance for, and received, permission to absent themselves from their stations prior to their leaving the facility. Apparently Brown left once during a meal period without permission, and she was not disciplined, but Clancy credibly testified that she did not know about the incident, and there is no evidence to the contrary.

The question of Opal's discharge, as it relates to Opal's violation of Respondent's rule, is discussed *infra*.

C. Respondent's Knowledge and Animus

As shown above, Opal was a key figure in the Union's organization and activity at Respondent's facility. Zapiler acknowledged that he had been aware of the organizing drive for several months, and that he knew Opal was a leader of the drive. During Zapiler's conversation with Opal on August 8, just after the union election discussed above, Zapiler asked Opal if she was a union employee. Zapiler testified:

Q. . . . At the time of your conversation in the hallway with Ms. Opal, it is my understanding that you said something to her about working for the union.

A. I asked her if she was in fact a union employee.

Q. How did you come to ask her that type of question or that question?

A. During the four, five, six months prior to that, I was aware that the organizing drive that the union had done had some people that were leading it. I did not bother to hinder that or get involved with it, but I certainly was aware of the volume of mail that the union was putting out in the organizing effort. It was readily available. So I did know that—I didn't know if 5, 16, or 25 people were involved.

Q. So did you know Ms. Opal by sight?

A. No.

Q. How did it happen that you would ask her that question?

A. Well, I knew the name Ms. Opal had come up, that she was amongst the organizers. But I did not know who she was or what she looked like.

Q. Well, if there is that tenuous a relationship with Ms. Opal, what would occasion your question about her working for the union?

A. Only to the fact that through some of the literature it was evident and it was obvious that she was working—at least one of the leaders of the

union and I thought that maybe she was directly employed by them.

During Zapiler's conversation with Opal on August 8, Zapiler was aggressive and blunt in his approach. It is clear from both Zapiler's testimony and that of Opal, that Zapiler was unhappy with the Union's victory, and with Opal's part in that victory. Zapiler did not seem vindictive, but his message to Opal was clear—he considered the matter closed with the election, but he still did not like what had happened.

On August 27 the Union filed a charge with NLRB,¹⁴ alleging that, on August 8, Zapiler harassed Opal and accused her of being a union "plant," or instigator. Zapiler received a copy of that charge, which was not the basis of a complaint. The charge was based upon Zapiler's conversation of August 8 with Opal. Approximately on August 27 or soon thereafter, Opal talked with Clancy, who said Zapiler was very upset about the charge. Opal told Clancy that the charge had been filed without Opal's knowledge, and Clancy replied that Zapiler would be happy if Opal told him that fact.

Opal and Moy testified relative to the occasion in October, referred to above, when Clancy refused permission for the two to switch a workday. Opal, Moy, Cawley, Bond, Froid, and Zelinek credibly testified that switching of workdays, with Clancy's permission, long has been a customary, and well-used, practice and that none of them knew of any instance (other than the Moy-Opal incident) when permission to switch was denied.

Opal testified that, when she went to Respondent's facility to pick up her final paycheck, Clancy stated, "Maureen, this is your termination check. Because of the statement you gave to the National Labor Relations Board the company no longer wants you to work here." Clancy denied that testimony, and stated that the only thing she told Opal is the written statement:¹⁵

Maureen Opal:

Based on statement you have given, management feels it would be better off without your services.

Foothills Care Center
/s/ Ruth Clancy, RN, DON

Clancy explained that the "statement" referred to was the statement Opal gave to Fell in explanation of Opal's absence from the facility. (G.C. Exh. 4.)

On October 22, after Opal's termination, Zapiler, Fell, Clancy, Edwards, and Brozovich met with approximately 12 to 15 members of the nursing staff, and Zapiler spoke to the group. Cawley testified that Zapiler stated:

Well, he said, "You are probably wondering—nobody has asked me why we fired Opal." And then he said, "Oh, I better not say that. I might get upon on harassment charges but my attorney assures me we had reasons for firing her." And then I piped up and I said, "There has been numerous oc-

¹³ Legality of the policy is not in issue.

¹⁴ G.C. Exh. 3.

¹⁵ Resp. Exh. 5

casions where there has been two nurses on," and that they were scheduled that way, there just wasn't a third nurse, and he said, "Well, we couldn't get any help at that time," he says, "but that's different."

Later, Cawley testified that Zapiler also stated "... other people could get away with it at times. Opal just happened to be one that was caught." Froid generally corroborated Cawley, but she did not testify concerning the additional statement quoted above.

Discussion

So far as the NLRB charge is concerned, it is clear that, by August 27, Respondent knew that Opal denied complicity with the Union and that the Union alone had filed the charge. There is no evidence, or inference, that Respondent was concerned with the charge thereafter, or that the charge was a reason for Opal's discharge. There is no basis upon which to find an 8(a)(3) or (4) violation in connection with the NLRB charge.

Zapiler's conversation with Opal on August 8, and Clancy's refusal to permit Clancy and Moy to switch a workday, are found to constitute indicia of Respondent's union animus, and dislike of Opal's union activity.

So far as the final paycheck conversation is concerned, Clancy's version is credited, and it is found that there is no evidence of an 8(a)(3) or (4) violation based upon the conversation.

Relative to Zapiler's talk with nurses on October 22, Cawley's testimony was not denied by Zapiler, and it is credited. However, that conversation is of little weight in considering Opal's discharge.

D. Opal's Discharge

Although the chronology is not entirely clear, it is apparent from the record that Clancy learned of Opal's absence, was upset about it, and informed Fell, who told Zapiler about it. Those three collaborated in the decision to fire Opal. The assigned reason was Opal's having left her post of duty in violation of Respondent's written policy, and in derogation of Respondent's regulatory responsibilities.

The principal question is whether or not Opal would have been fired in any event, regardless of her union activity. No other nurse has been disciplined for being absent from her station, but as discussed above, that is irrelevant since no other nurse has done what Opal did.

Possibly, as Respondent contends, Opal overreacted at the outset, and was more concerned with her husband's strained back than the facts warranted. However, even if true, that matter would be irrelevant. Clearly, Opal reacted in good faith, and certainly not out of a desire to goof off for the evening.

Opal's recitation of her efforts to obtain a relief nurse appeared to be exaggerated,¹⁶ but it is clear from her uncontradicted testimony that she did make a good-faith and diligent effort to find a relief nurse. She was in a dilemma, and the only apparent solution was the one she

¹⁶ Brozovich is credited in her denial of Opal's testimony that Opal asked for and received Brozovich's permission to leave the station.

adopted—she obtained the assistance of Brader and Pas-torius. Further, during a lull in the excitement at home, Opal briefly returned to the facility to check things out, and later called the facility on the telephone for the same purpose. Those were not the actions of an unconcerned or indifferent employee. Rather, they tend to exhibit a professional attitude. Finally, Opal promptly reported the entire incident the following day to Clancy. Opal's absence was serious, but there is no evidence that she ever had been previously warned or disciplined, or considered as anything other than a good employee.

Based upon Respondent's practice of permitting employees to leave the premises during a shift after request was made, it appears that Opal's discharge was inconsistent and illogical. Some factor other than business practice seems to have been considered. Respondent knew of Opal's union activity and its results, and Respondent was displeased with union organization of its facility. Other union activists were not fired by Respondent, but there is no evidence of any cause to discipline any of them. As Zapiler told nurses after Opal's discharge, Opal just happened to get caught. The only apparent cause for Respondent treating Opal in the manner it did was Opal's union activity.

In summary, Opal made what was, so far as the record shows, her first mistake at work. That mistake resulted in no damage or inconvenience to Respondent or any of its patients. Opal was a good employee, with no record of mistakes. Respondent customarily was generous in its permission for nurses to leave the facility. Opal was a union activist, and she was not treated generously. *Prima facie*, Opal's inconsistent treatment resulted from her union activity. Respondent failed in its burden to show that Opal would have been fired even if she had not been a union activist.¹⁷ Respondent violated Section 8(a)(3) and (1) as alleged, when it fired Opal.

E. Alleged 8(a)(1) Violation

Paragraph VI(c) of the complaint alleges that Fell required Opal to prepare a written explanation of her absence, because of Opal's protected activity and her testimony give under the Act.

As discussed above, Opal's actions were unusual, and they constituted a substantial departure from Respondent's written policy. Clancy's initial knowledge of Opal's actions was hearsay in nature, and Fell and Zapiler had no knowledge of the incident, other than what they received through Clancy. Respondent could not be expected to ignore Opal's actions. Common business practice dictated some response, regardless of the extent of that response. Respondent's request that Opal give it a written report of her violation of policy was made promptly after the incident, was logical and reasonable, and was not, so far as the record shows, dictated wholly or partially by Opal's activity. It seems apparent that a similar request for a report would have been made of any nurse who acted as Opal did, irrespective of any union activity.

¹⁷ *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

Respondent did not, as alleged, violate Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES
UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, in violation of Section 8(a)(3) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent unlawfully discharged Maureen Opal. I will, therefore, recommend that Respondent offer Opal her former job or, if that job no longer exists, a substantially equivalent job, without prejudice to her seniority and other rights and privileges, and make her whole for any loss of earnings suffered by reason of the discrimination against her by payment to her of a sum of money equal to that which she normally would have earned, absent the discrimination, less net earnings during such period, with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977). It will be further recommended that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amounts of backpay due and the rights of reinstatement under the terms of these recommendations.

Upon the basis of the foregoing findings of fact and upon the entire record, I hereby make the following:

CONCLUSIONS OF LAW

1. Foothills Care Center, Inc., is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Nurses, Professionals and Health Care Employees, Local Seven, UFCW, AFL-CIO is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(3) and (1) of the Act by discharging Maureen Opal because of her activity protected by the Act.

4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁸

The Respondent, Foothills Care Center, Inc., Longmont, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Violating Section 8(a)(3) and (1) of the Act by discharging an employee because of the employee's activity protected by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer Maureen Opal immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for her loss of earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at Denver, Colorado, operation, copies of the attached notice marked "Appendix."¹⁹ Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by an authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

It is recommended that all allegations of the complaint found herein not to have been proved be dismissed in their entirety.

¹⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to

form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, or to refrain from any of all such activities.

WE WILL offer Maureen Opal immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for her loss of earnings, with interest thereon.

FOOTHILLS CARE CENTER, INC.